**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF JUDGES**
**BRANCH OFFICE**
**SAN FRANCISCO, CALIFORNIA**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1877, AFL-CIO**

and Case 21–CB–13265

**TTCC, INC., d/b/a TRIED & TRUE CORPORATE CLEANING**

*Alan L. Wu,* Los Angeles, Calif., for the General Counsel.
*Monica T. Guizar,* of *Weinberg, Roger & Rosenfeld*, Los Angeles, Calif., for Respondent.
*Joshua R. Woodard*, of *Luce, Forward, Hamilton & Scripps*, San Diego Calif., for the Charging Party.

**BENCH DECISION**
**and**
**CERTIFICATION**

**JAMES M. KENNEDY, Administrative Law Judge**: This case was tried in Los Angeles, California on September 22, 2003. The unfair labor practice charge was filed on September 6, 2002 by TTCC, Inc., d/b/a Tried & True Corporate Cleaning. The Regional Director issued the complaint on July 2, 2003. It alleges that Respondent violated §8(b)(3) of the Act in refusing to sign a fully negotiated collective bargaining contract. Respondent's answer denied the commission of any unfair labor practice.

After hearing the evidence on September 22, 2003, I determined that it was appropriate to issue a bench decision under Board rule §102.35(a)(10). All parties argued the matter orally prior to my rendering the decision that same day. Pursuant to Board rule §102.45(a), I hereby attach pages 136-143 of the transcript to this decision as Appendix A and certify that it

(including interlineal corrections), is an accurate transcription [1] of my decision as delivered. [2]

Appendix B is the recommended notice to employees. [3] The Regional Director is given discretion to require its publication/posting in any foreign language she deems appropriate.

_____
James M. Kennedy
Administrative Law Judge

Dated: October 15, 2003

[1] The transcript pages reproduced in Appendix A are copied verbatim from the reporting service's diskette. They have been reformatted to allow for the corrections which are shown. The reformatting process resulted in fewer lines per page and those lines have been renumbered. The pagination remains accurate.

[2] If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

[lines 1-15 omitted]

**JUDGE KENNEDY: Back on the record.**

Well, during the last almost 50 minutes, I guess I've taken, in drawing this up, I've reached some Findings of Fact and Conclusions, but I want the parties to understand that this is a decision that's rendered as a bench decision under Board Rule and Regulation §102.35 (a)(10), relating to bench decisions and there are some departures, I guess, from the routine procedures in which these are handled.

Usually, of course, parties are given the opportunity to write briefs and then the judge takes the transcript and reads

it in full and renders a decision which is transferred to the Board which the parties can take exceptions to.

In this particular case, because there is no transcript that's available at this point, I read my -- or I dictate or I do something to cause my decision to appear in the transcript itself and then within -- as soon as the written transcript becomes available, I then attach to it a certification which serves as if it were a regular decision and, when that certification issues, the parties may take exceptions to he decision at that time.

The certification is ~~as~~ one of accuracy. It also allows me to correct the transcript where necessary becomes as it comes in electronically and I'm able to do that. And I attach a copy of~~,~~ those pages of the transcript that consists of my decision~~;,~~ I attach that to the certification and those pages serve as a substitute for the normal decision.

So, if you have any -- if you want to file exceptions, you need to wait until I issue the certification, but then the normal rules would apply.

In any event, I'm now going to go through my decision here, and there may be times when I stop and explain things a little bit or I may have some quotes or whatever. I've taken the liberty of grabbing the [Teamsters Local 617] (Christian ~~Slavensen~~ Salvesen), [308 NLRB 601 (1992)], decision mainly because it has a nice §8(b)(3) order in it which one can follow.

[these lines blank in original]

**BENCH DECISION**

JUDGE KENNEDY: I now make the following Findings of Fact and some Conclusions of Law at this point along the way. I'm not going to distinguish between them at this point.

1. Paragraph 1 is that Respondent has stipulated and the parties have stipulated that the Charging Party employer is an employer in an industry affecting commerce within the meaning of Sections 2(2), (6) and (7) of the Act based on its contract with the United States in which it annually provides services valued in excess of $50,000.00 to the United States.

[blank]

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. David Huerta is a senior coordinator of Respondent and is an agent of Respondent within the meaning of Section 2(13) of the Act.

4. Since May 15, 1998, Respondent union has been the Section 9(a) representative of employees employed by the Charging Party in an appropriate bargaining unit consisting of the Charging Party's employees providing janitorial and landscaping duties at the Roybal [Federal] Building in downtown Los Angeles.

5. In mid-November of 2001, Respondent and the Charging Party met at the New Otani Hotel in Los Angeles to negotiate a successor collective bargaining agreement to the contract which had expired on May 14, 2001.

6. As a contractor providing services which consist primarily of labor, the Charging Party periodically signs a business contract with the General Services Administration or GSA. That contract requires that the employer pay wages in accordance with the wage rules and regulations set by GSA.

7. Without GSA reimbursing it for wages paid to its employees, the Charging Party would be unable to pay its employees for the work they perform.

8. This financial circumstance has been extant for the Roybal Federal Building contractor since, at least, May 15, 1996

and, no doubt before, when the previous contractor, White Glove Service Systems, and ~~the~~ Respondent Union signed a memorandum of understanding which recognized that bargaining unit employees could not be paid negotiated wage increases until and unless the GSA approved those increases and amended the business contract accordingly.

9. As an institution, Respondent union was aware of this procedure and was also aware or should have been aware that the Roybal Federal Building janitorial contractor, whoever it was, was subject to the wage controls of GSA.

10. Dennis Miller, ~~the~~ a former official of White Glove, has been assigned under an ~~SMA~~ SBA, Small Business Administration, program, to be a business mentor to the Charging Party. Miller had negotiated the 1996 memorandum of understanding. He lives near Phoenix, Arizona and not in the Los Angeles area.

11. In November, 2001, the Charging Party asked Miller to mentor it through the collective bargaining process and in mid-November Miller and Charging Party's president, Ruben Lopez met with Respondent's David Huerta at the New Otani Hotel to negotiate a new collective bargaining agreement.

12. Miller testified that the sole reason he came to Los ~~Angles~~ Angeles was to make certain the union understood the Charging Party's financial limitations. He testified that he told Huerta that the Charging Party could not enter into any collective bargaining agreement unless the union understood that the

Charging Party could pay nothing unless the GSA approved and paid for any wage or benefit increases.

13. Huerta, though not testifying in agreement, nonetheless, agrees that Miller told him at the meeting, or let's say, Miller told him as the meeting ended that GSA had to approve the increases.

14. I find that from the outset of negotiations that payment of any negotiated wage or benefit increases were conditioned upon congruent funding from GSA.

[15.] This condition was never lifted from the subsequent negotiations or communications. That was 15. Did I say paragraph 15? That was Paragraph 15.

16. Therefore, the letter of agreement between the parties signed on April 1, 2002 did not remove the conditions as GSA had not yet approved any change in the business contract.

17. I further find that, as of April 1, 2002, Respondent and the Union had reached a conditional collective bargaining agreement in all respects and that the only issue preventing the Charging Party from paying the negotiated wage and benefit increases was that GSA needed to approve it.

18. GSA would not accept the letter of agreement as a collective bargaining agreement and, therefore, did not process it for approval.

19. The Union's draft bargaining agreement, G. C. Exhibit 5, did not incorporate the conditional language and Charging

Party was entitled to insist on language that did.

20. General Counsel's Exhibit 6 properly incorporates the language and constitutes a complete collective bargaining agreement incorporating all the terms of the agreement, including the conditions which were set at the beginning of collective bargaining.

21. The Charging Party, on or about August 14, 2002, demanded that Respondent sign the collective bargaining agreement and Respondent, through Huerta, refused to do so.

22. Respondent's refusal to sign the collective bargaining agreement as set forth in General Counsel's Exhibit 6 constitutes a violation of Section 8(b)(3) of the Act.

Accordingly, Respondent is hereby ordered to cease and desist from:

A. Refusing to sign the negotiated collective bargaining agreement, General Counsel's Exhibit 6;

B. ~~From any like or related or~~ In any like or related manner violating the Section 7 rights of the employees.

Respondent shall also take the following affirmative action:

A. ~~It will,~~ Upon request, execute the collective bargaining agreement submitted to it by the Charging Party on or about August 14, 2002; and

B. ~~It shall~~ Post at its offices and meeting halls copies of a notice which I will attach to the certification when I

issue it in about ten days. Copies of that notice on forms provided by the Regional Director for Region 21 after being signed by Respondent's authorized representative shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ~~insure~~ ensure that the notices are not altered, defaced, or covered by any other material.

C. Sign and return to the Regional Director for Region 21 sufficient copies of the notice for posting by Tried & True Corporate Cleaning for posting, if willing, at all places where notices to employees are customarily posted~~.~~ (I think I'll just limit that to the Roybal Federal Building~~.~~; I don't think I care about any other location that they may have) and ~~will notify the or I guess~~ file with the Regional Director a certification notifying the Regional Director in writing within 20 days from the date of the order of what steps the Respondent has taken to comply.

All right. Are there any questions? Does anybody want any clarification?

**All right. Hearing nothing further, the hearing is closed.**

**(Whereupon, the hearing in the above-entitled matter was closed)**

"Appendix B"

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain collectively on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

**WE WILL NOT** fail or refuse to sign the collective-bargaining agreement submitted to us by TTCC, Inc., d/b/a Tried & True Corporate Cleaning on or about August 14, 2002.

**WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL**, upon request, execute the collective-bargaining agreement submitted to us by TTCC, Inc., d/b/a Tried & True Corporate Cleaning on or about August 14, 2002.

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1877, AFL-CIO**

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor, Los Angeles CA 90017-5449

(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5229.